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May 29, 2003

Regarding: MB 02-277

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20445

Dear Ms. Dortch:

At the request of Commissioner Abernathy, I submit herewith for the record in the above-captioned proceeding Comments and Reply Comments previously filed by Pegasus Communications in February and March, 1997 concerning the implications of duopolies for fostering increased competitiveness and diversity in smaller television markets.

As described in this and other filings, Pegasus has advocated that the public interest in localism and competition in broadcasting is best served by adopting flexible rules governing combinations in smaller broadcast markets. Pegasus continues to urge that this aim, and the aim of regulatory certainty, are best met through a rule that clearly states which combinations will be permitted and does not effectively prohibit combinations in markets with four or fewer television stations.

If the Commission is reluctant to adopt such a rule, but might be more amenable to considering waivers of the rule on a case-by-case basis for combinations in smaller markets, Pegasus urges that the Commission include in the rules governing the standards for granting such waivers presumptions favoring approval of proposed combinations in specific circumstances consistent with the Commission's goals. This would improve regulatory certainty for interested parties.

Specifically, Pegasus proposes that:

> *A combination among two television stations in a DMA would receive a rebuttable presumption of approval if such a combination would not result, post-transaction, in common ownership of television stations in a DMA with the greater of:*
> *(i) 40% of the DMA's television advertising revenue; or*

(ii) a share of the DMA's television revenues that exceeded the revenue share of the television station with the greatest share of the DMA's revenues as measured immediately prior to the proposed combination.

Pegasus also urges that the Commission institute a reasonable timeline for handling transactions subject to this presumption, and consider adopting an approach that would deem such transactions approved if not otherwise acted upon within a reasonable period such as 120 days. Such a provision would take account of the exigencies of the capital markets and the need for timely action on proposed transactions.

<u>The Merits of this Proposal</u>

The rationale and empirical basis for this proposal are described in the accompanying documents. In brief, Pegasus urges that this proposal best protects the aims articulated by the Commission in this proceeding in the following respects:

1. In practical terms, a rule that prevents combinations among the four most highly rated stations in a DMA will prevent *any* combination from occurring in DMA's with fewer than five stations. This will only serve to maintain the status quo in these markets where, as is described in the accompanying filing, the two most highly ranked stations take an average of 80% of the DMA's revenues. Somewhat perversely, such a rule may actually serve to diminish the relative competitiveness of weaker stations in markets with five or six stations, as in these markets the number one and number two stations would have the latitude to acquire the number five and number six stations, but if they were to do so, the number three and number four stations would thereafter be prohibited from combining. Obviously, such a result will significantly lessen the competitive position of the weakest stations in five or six station markets.

2. The rebuttable presumption proposed here would mitigate these risks by affording weaker stations in smaller markets the flexibility to combine to achieve the larger scale necessary to become more competitive, while also protecting numerosity of voices in such smaller DMA's. It would prevent the strongest station from acquiring another in a market with four or fewer stations, and would also likely prevent the second strongest station in such a market from combining *if* the result were to create a duopoly with a greater revenue share than the strongest station in the market. However, it would allow weaker stations in these markets to combine and to thereby achieve the efficiencies that common operation of two stations enables. In five and six station markets, it would also allow weaker stations to combine *even if* the two largest stations had already

acquired the number five and number six stations, thereby avoiding the perverse result noted above.

3. This approach would be preferable, Pegasus urges, to the failing station waiver standard, because it will allow weaker stations to improve their competitive positions *before* they have exhausted their limited financial resources. Also, the failing station waiver may have the perverse result of lessening the relative competitive position of weaker stations in smaller markets by providing a means for the most dominant stations to create duopolies that only serve to more firmly establish their dominance.

4. A rebuttable presumption approach would leave ample room for the Commission to consider other factors such as whether local newsgathering is enhanced or endangered by the proposed combination.

Recognizing that the Commission is near the end of a lengthy proceeding on an important subject, we respectfully request that these modest suggestions for flexibility and regulatory certainty in smaller markets receive due consideration.

Very truly yours,

//signed//

Kathleen M.H. Wallman